

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EFFYIS, INC., et al.,

Plaintiffs/Counterclaim-Defendants,

v.

Case No. 18-13391

DARREN KELLY,

Defendant/Counterclaimant.

**ORDER GRANTING IN PART PLAINTIFFS' TIME-SENSITIVE MOTION TO DISMISS
THEIR AFFIRMATIVE CLAIMS VOLUNTARILY**

Trial is set to commence in this matter on November 1, 2022. On October 10, 2022, Plaintiffs/Counterclaim-Defendants ("Plaintiffs") filed "Plaintiffs' Time-Sensitive Motion to Dismiss Their Affirmative Claims Voluntarily," seeking the court's permission to dismiss without prejudice their three pending claims under Federal Rule of Procedure 41(a)(2). (ECF No. 84.) Given the proximity to trial and the awareness of all parties as to the potential filing of a voluntary dismissal motion, on October 11, 2022, the court ordered Defendant/Counterclaimant ("Defendant") to file an expedited response by October 14, 2022. (ECF No. 86.) He complied. (ECF No. 87.) On October 16, 2022, Plaintiffs filed a reply brief. (ECF No. 88.) The court has since reviewed these filings, finding as follows.

The parties are in agreement with respect to a dismissal of Plaintiffs' pending claims at this juncture. However, they disagree as to whether the dismissal should be with prejudice. Plaintiffs advocate for a dismissal without prejudice, contending that a dismissal with prejudice would serve as an adjudication on the merits of the claims,

thereby preventing them from presenting their affirmative defenses at trial and effectively awarding judgment in Defendant's favor. Defendant does not express opposition to Plaintiffs' intention to present their affirmative defenses at trial but does advocate for a dismissal with prejudice to ensure that Plaintiffs are precluded from re-filing their claims. Moreover, based on the representations in their briefing, Plaintiffs appear to be permanently forgoing their damages claims against Defendant.

Given the parties agreement on the substantive dismissal of Plaintiffs' claims, the court grants Plaintiffs' motion to the extent that their claims are in fact dismissed. The court finds the remaining issue—whether the dismissal is with or without prejudice—to be one of draftsmanship. As such, the parties are ordered to submit a stipulated order to the court containing language that protects their respective interests. Accordingly,

IT IS ORDERED that Plaintiffs/Counterclaim-Defendants' Time-Sensitive Motion to Dismiss Their Affirmative Claims Voluntarily is GRANTED IN PART to the extent that their pending claims are dismissed from this action.

IT IS FURTHER ORDERED that the parties shall submit a stipulated order on or before October 25, 2022 incorporating the court's ruling that contains language sufficient to protect their interests.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 18, 2022

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 18, 2022, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522